

DOCKET

ORIGINAL

BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C.

RECEIVED

OCT 13 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations  
(Avon, North Carolina)

)  
)  
) MM Docket No. 98-152  
) RM-9338  
)

To: Chief, Allocations Branch

**COMMENTS OF COASTAL BROADCASTING COMPANY, INC.**

Coastal Broadcasting Company, Inc ("Coastal"), licensee of WYND-FM, Hatteras, North Carolina and by its undersigned attorneys, respectfully submits these comments in response to the Notice of Proposed Rule Making in the above-captioned matter, released August 21, 1998 (the "Notice").

1. Avon Broadcasting Company ("Petitioner") filed a Petition for Rule Making ("Petition") requesting that the Commission initiate a proceeding to amend the FM Table of Allotments by allotting Channel 294A to Avon, North Carolina. Petitioner contended that Avon, located on Hatteras Island, was a community for allotment purposes and that the allotment of this channel would provide Avon with its first local aural service. Petitioner further charged that if the Commission granted its proposal, it would proceed to file the appropriate application to construct the facility requested therein.

2. When assessing the merits of an allotment proposal, the Commission considers the

No. of Copies rec'd  
List ABCDE

CHY

proponent's interest in pursuing the allotment request. See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Llano and Kerrville, Texas), 4 FCC Rcd 7900 (1989). However, the Commission has cautioned against filing a rule making petition whereby the petitioner lacks a genuine interest in pursuing such request. See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Bagdad, Arizona), 9 FCC Rcd 70, n.2 (1993); and Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Morristown, New York), 5 FCC Rcd 6976-77 (1990). As demonstrated below, Coastal questions the Petitioner's intentions to pursue the construction and implementation of a new broadcast facility in Avon, as well as a second proposed allotment at Buxton, filed only days later by the same company.

3. In 1987, Pamlico Sound Company, Inc. ("Pamlico"), of which Richard Hayes is the President, proposed the allotment of a first local FM service to Hatteras, North Carolina ("WYND-FM"). The Commission allotted the channel, yet, just a few years later, Pamlico filed a subsequent rule making proposal to modify the WYND-FM construction permit to specify a higher powered channel. See RM-6698. While the Commission granted the modification, Pamlico failed to pursue the construction of this facility in order to provide Hatteras with its first local service. Instead, in 1994, seven years after the initial allotment, Pamlico sold the unbuilt construction permit to Coastal. See BAPH-941216GI. Coastal promptly built the facility and soon began operating WYND-FM.

4. Here, Avon Broadcasting Company is identified only through Mr. Hayes address. No principal or other address for the applicant is given. Therefore, given his history in a neighboring community, Coastal questions his newfound interest, via the Petitioner, to again provide a "first local service" to a neighboring community in North Carolina, as well as another

service to another neighboring community. Mr. Hayes failure to construct the station in Hatteras years ago demonstrates his unwillingness and lack of interest in building a broadcast facility. Moreover, there already is an outstanding construction permit for another FM broadcast facility to serve Hatteras, North Carolina. See FCC File No. BPH-960826MR. As this station is not yet operational, it would not serve the public interest to allot a subsequent channel to this area only to have it remain unbuilt. The area proposed to be served by the stations is a resort area, for the most part sparsely populated except for the summer vacation season. The population of Dare County, in which Hatteras, Buxton and Avon are located, has a population of only 22,746 (1990 census). Already there are nine radio stations serving the county (six existing stations, two construction permits and one allotment that has mutually exclusive applicants). It simply makes no economic sense for any person to be interested in yet another station serving this already saturated market, particularly where that person is at least related to a party which has already failed to construct a station in the same area.

5. As the Commission will not allot a channel to a community unless there is a bona fide expression of interest in that channel, Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Shingletown, California), 11 FCC Rcd 8672 (1996), the channel proposed here cannot be allotted without a further demonstration that this proposal is in fact bona fide. To do less in this circumstance would subvert the integrity of the Commission's allotment process and waste the spectrum by allotting it at a location where it is unlikely to be used in lieu of someplace where it could actually provide a needed service.

6. Moreover, Avon is located on the Outer Banks of North Carolina, in the middle of Cape Hatteras National Seashore. Only a limited amount of private land is available for tower construction in this area. The Petitioner should be required to demonstrate the availability of a

viable and available tower location in this environmentally protected location.

7. For the foregoing reasons, Coastal urges the Commission to dismiss Petitioner's proposal to allot Channel 294A to Avon, North Carolina.

Respectfully submitted,

COASTAL BROADCASTING COMPANY, INC.

By: Lara Strayer Meisner

David D. Oxenford

Lara Strayer Meisner

Its Attorneys

Fisher Wayland Cooper Leader  
& Zaragoza L.L.P.  
2001 Pennsylvania Avenue, NW  
Suite 400  
Washington, D.C. 20006  
(202) 659-3494

Dated: October 13, 1998

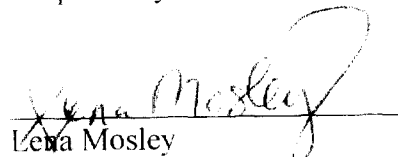
**CERTIFICATE OF SERVICE**

I, Lena Mosley, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 13th day of October, 1998, I caused to be served by first class mail a copy of the foregoing "**COMMENTS OF COASTAL BROADCASTING COMPANY, INC.**" on the following:

John A. Karousos\*  
Federal Communications Commission  
2000 M Street, NW  
Room 554  
Washington, D.C. 20054

Richard J. Hayes, Jr.  
8404 Lee's Ridge Road  
Warrenton, VA 20186

Respectfully submitted,

  
Lena Mosley

\*via hand delivery